

Before the
Federal Communications Commission
Washington, DC 20554

FILED/ACCEPTED

JUL 17 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
PENDLETON C. WAUGH, CHARLES M.)	EB Docket No. 07-147
AUSTIN, and JAY R. BISHOP)	
)	
PREFERRED COMMUNICATIONS)	File No. EB-06-IH-2112
SYSTEMS, INC.)	NAL/Acct. No. 200732080025
)	
Licensee of Various Site-by-Site Licenses in)	FRN No. 0003769049
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	
To: The Honorable Richard L. Sippel		
Chief Administrative Law Judge		

MOTION FOR LIMITED INTERVENTION

Michael D. Judy, on behalf of himself and the undersigned Movants (collectively "Movants"), pursuant to section 1.223(c) of the Commission's rules,¹ seeks leave of the Presiding Judge to intervene in this proceeding on a limited basis.² Movants seek leave to

¹ 47 C.F.R. § 1.223(c).

² Moreover, as explained below, this motion differs substantially from the motion to intervene filed by the Preferred Investors Association ("PIA"), which was denied by the Presiding Judge on July 16, 2009. See Preferred Investors Association, Motion to Intervene (June 18, 2009) ("PIA Motion"); Order (Sippel, Chief Administrative Law Judge, rel. July 16, 2009) ("July 16 Order"). First, the result sought by the instant motion is far narrower than that sought by PIA. Second, the principal basis for the denial of the PIA Motion is not applicable here. Third, this filing is timely because it was precipitated in part by the filing of an action in Delaware Chancery Court just last week.

intervene for the principal purpose of asking the Presiding Judge to hold any proposed settlement between the Commission's Enforcement Bureau and the above-captioned corporations in abeyance pending resolution of litigation initiated last week challenging, among other things, Mr. Charles M. Austin's lawful entitlement to exercise any ongoing or future managerial authority over Preferred Communications Systems, Inc. ("PCSI"). Movants have standing to seek this intervention because, absent such intervention, they will be powerless to ask the Presiding Judge to hold any settlement in abeyance while issues surrounding Mr. Austin's managerial authority are resolved. Moreover, Movants' limited participation will aid in the Presiding Judge's consideration of any proposed settlement, because only Movants will have an interest in raising central questions regarding Mr. Austin's authority to negotiate, execute and implement any proposed settlement. Finally, Movants could not have filed this Motion previously, because it is based on litigation that was initiated last week. That litigation could not have been initiated previously, because it was precipitated in part by the very settlement discussions at issue in this case.

DISCUSSION

I. MOVANTS HAVE A STRONG INTEREST IN THE MATTER.

With respect to the limited purpose for which they seek intervention, Movants have a strong interest in this matter. Each individual movant is a shareholder in PCSI. On Wednesday, July 8, 2009, Movant Michael D. Judy filed in the Court of Chancery of the State of Delaware a Verified Complaint for Declaratory and Injunctive Relief ("Relief Complaint") and Verified Complaint to Compel Annual Meeting Pursuant to 8 DEL. C. § 211 ("Annual Meeting Complaint," and, together with the Relief Complaint, the "Delaware Complaints") (appended here as Exhibits 1 and 2, respectively). As the Delaware Complaints explain, Charles M. Austin – PCSI's sole director, who purports to be the current Chairman of the PCSI Board and who is

alone representing PCSI in the instant matter – lacks authority under PCSI’s Certificate of Incorporation to take action on behalf of PCSI or its shareholders. That certificate provides that, given the number of outstanding shares, the holders of certain PCSI Preferred Stock (including all of the Movants) “shall have the power to elect one director to the Board at any annual meeting” and that “the Board shall consist of no less than four (4) and no more than nine (9) members.”³ Mr. Austin has refused to hold any annual meeting during the company’s decade-long existence, or to otherwise permit the appointment of additional directors. He has likewise failed to issue stock certificates detailing certain shareholders’ investments and refused to honor shareholders’ requests for access to PCSI books and records.⁴ And Movants believe that he may now be pursuing a self-dealing sale of the company’s assets without any shareholder oversight. The Delaware Complaints accordingly have requested that the Delaware Chancery Court (among other things) issue an injunction ordering PCSI to hold an annual meeting at which the shareholders may address critical issues regarding the control over the company, elect new directors, and perhaps select a new Chair of the Board.

In light of Mr. Austin’s unlawful exercise of exclusive management authority, the Movants should be permitted to intervene for the limited purpose of asking the Presiding Judge to hold any proposed settlement in this matter in abeyance pending resolution of the Delaware litigation. As the courts have long recognized, individual shareholders are entitled to act on a company’s behalf in cases where the company’s management is not doing so in good faith.⁵

³ See Relief Complaint at ¶ 23.

⁴ *Id.* ¶¶ 25-29.

⁵ See, e.g., *Franchise Tax Board of California v. Alcan Aluminum Ltd.*, 493 U.S. 331, 336 (1990) (explaining that the “long-standing equitable restriction that generally prohibits shareholders from initiating actions to enforce the rights of the corporation” is inapplicable where “the corporation’s management has refused to pursue the same action from reasons other

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Likewise, where the company is being managed by a party without lawful authority to exercise such authority, investors must be permitted to protect their interests and the company's pending resolution of the underlying corporate governance dispute. This is all that Movants here seek.⁶ Once the Delaware Court has resolved the litigation and allowed implementation of the lawful management of PCSI, settlement negotiations may proceed, hopefully to a conclusion satisfactory to all interested parties, or, alternatively, PCSI will be better positioned to defend the allegations set forth in the pending hearing.

In short, Movants have an interest in ensuring that if a settlement can be achieved, which would be the Movants' preference, any approved settlement in this matter reflect the intentions and actions of the company's proper management – not those of a rogue "Chairman" exercising power not afforded him by the Company's governing documents or pertinent law. To that end, Movants request leave to intervene for the purpose of ensuring (a) that in the event that the parties present the Presiding Judge with a proposed settlement, they may ask the Presiding Judge to hold the matter in abeyance until the Delaware Chancery Court determines whether Mr. Austin is in fact empowered to act on PCSI's behalf,⁷ and (b) that any subsequent settlement of

than good-faith business judgment"). See also *In re: Troutman Enterprises, Inc.*, 286 F.3d 359, 364 (6th Cir. 2002) (same).

⁶ Thus, the basis for the Presiding Judge's rejection of the PIA motion seeking intervention – the conclusion that the "[i]nterests of PCSI shareholders are being represented by the corporate parties and by a corporate officer" – does not apply to the instant motion. *July 16 Order* at 2. See also Enforcement Bureau's Opposition to Preferred Investors Association Motion to Intervene at 3 (June 26, 2009) ("EB Opposition") (arguing that "any cognizable interests [investors] may have are already represented by the [defendant] corporations themselves"). The essence of Movants' argument here is that the Defendants are currently controlled by management that lacks legal authority to represent the company's investors and that is in fact acting completely independently of investors' wishes.

⁷ Movants emphasize that they do not seek leave to intervene for any other purpose, and neither expect not intend to otherwise participate in this matter unless and until PCSI's
(continued on next page)

this litigation that may be brought to the Presiding Judge (or subsequent defense of the pending allegations) may be accomplished by the rightful management of PCSI as reflected in the results of the Delaware litigation. To be clear, Movants do *not* seek to exercise control alongside Mr. Austin or to participate as an independent party in this case; they seek only an opportunity to hold any settlement in abeyance while the appropriate court works to assess whether Mr. Austin is in fact lawfully authorized to enter into such a settlement in the first place.⁸

II. MOVANTS' LIMITED PARTICIPATION WILL ASSIST IN THE CONSIDERATION OF ANY PROPOSED SETTLEMENT.

As discussed above, Movants only seek to intervene for one purpose: to ensure that they are authorized to ask the Presiding Judge to hold any proposed settlement in this matter in abeyance pending the Delaware court's resolution of issues concerning Mr. Austin's authority to enter into such a settlement on PCSI's behalf. Absent such intervention, no party is likely to raise questions regarding his authority, because all will be seeking approval of the proposed settlement. However, these questions must be considered, lest the Presiding Judge risk a decision approving a settlement negotiated and executed for PCSI by an individual with no authority to act for the company. Hence, Movants' limited participation will aid in the Presiding Judge's consideration of any proposed settlement.

III. MOVANTS COULD NOT HAVE INTERVENED PREVIOUSLY.

The filing of this motion within the 30-day window contemplated by section 1.223 of the Commission's rules was not possible because the motion is based on pending litigation regarding

management structure changes. For example, unlike PIA, Movants here do *not* seek to participate in settlement negotiations. *See* PIA Motion; EB Opposition at 4.

⁸ Thus, Movants agree with the Enforcement Bureau that investors' concerns with "the current stewardship of PCSI" are most appropriately resolved "in a local court of competent jurisdiction." EB Opposition at 3. Movant Michael D. Judy has sought such resolution, and
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the authority of Mr. Austin, and this litigation was first initiated last week, on July 8, 2009. As discussed above, Movants hope only to hold any settlement in abeyance until the Delaware litigation concludes; Movants clearly could not have sought this result within the 30-day window contemplated in section 1.223. Nor could Movants have filed the Delaware actions within that 30-day window. As discussed above, and in the Delaware Complaints attached hereto, Mr. Austin's malfeasance has culminated (thus far) in his possible efforts to secure a self-dealing settlement in the instant matter and, Movants believe, thereafter to sell PCSI assets on terms that benefit Mr. Austin himself (but not necessarily PCSI's shareholders). This activity only became apparent in recent weeks, and could not have formed the basis for a lawsuit in 2007, when the 30-day window closed.⁹

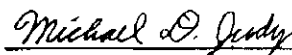
Movants simply ask the Presiding Judge to hold any proposed settlement in abeyance until that court performs its function.

⁹ The instant motion thus differs from the PIA motion in this regard as well. *See* July 16 Order at 2 (citing PIA's failure to file motion timely).

CONCLUSION

For the foregoing reasons, the Presiding Judge should grant the Motion for Limited Intervention.

Respectfully submitted,



Michael D. Judy

On behalf of himself and the following:

Linda Allen
Kenneth E. Aull
Alison D. Aull
Carole Lynn Downs
Kenneth Fry
Lia R. Gutierrez
James Herrick
Jane Herrick
Jamison N. Herrick
Mary F. Herrick
John Herrick
Sharlene Herrick
Herrick, Julie
Marilyn Huckins
Lee Jones
R. J. Leedy
Alan D. Pelton
Kathryn A. Pelston
Neil Alan Scott
Michael A. Scott
John G. Talcott III
Dorothea J. Talcott
John G. Talcott, Jr.
Richard Thayer
Mary Thayer
Paul P. Tucker
Lyle L. Wells

Michael D. Judy
5874 Nees Avenue
Clovis, CA 93611
(559) 246-3979

July 17, 2009

DECLARATION

I, Michael D. Judy, one of the Movants, hereby declare under penalty of perjury that the foregoing Motion for Limited Intervention was prepared under my direction and that all factual statements and representations contained therein are true and correct to the best of my knowledge.

Michael D. Judy
Michael D. Judy

Dated: July 17, 2009

CERTIFICATE OF SERVICE

I, Michael D. Judy, do hereby certify that on this 17th day of July, 2009, the foregoing Motion for Limited Intervention was served by first class mail, postage prepaid, on the following persons:

The Honorable Richard L. Sippel * Chief Administrative Law Judge Federal Communications Commission 445 12 th Street, S.W., Room 1-C768 Washington, DC 20554	Charles M. Austin Preferred Acquisitions, Inc. Preferred Communications Systems, Inc. 400 E. Royal Lane, 9 Suite N-24 Irving, TX 75039
Gary A. Oshinsky, Esq. * Anjali K. Singh, Esq. Investigations and Hearing Division Enforcement Bureau Federal Communications Commission 445 12 th Street, S.W., Room 4-C330 Washington, DC 20554	William D. Silva, Esq. Law Offices of William D. Silva 5355 Wisconsin Avenue, N.W. Suite 400 Washington, DC 20015-2003 Attorney for Pendleton C. Waugh
Jay R. Bishop P.O. Box 5598 Palm Springs, CA 92262	David L. Hill Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 1120 20 th Street, N.W. Suite 700, North Building Washington, DC 20036-3406 Attorney for Preferred Investor Association, Inc.

* Also served by hand delivery.


Michael D. Judy

EXHIBIT 1

1

action to enjoin Defendants or any affiliate thereof from entering into a settlement agreement, or any other agreement, pursuant to which the Company or its wholly-owned subsidiary, Preferred Acquisitions, Inc. ("PAI") would sell, transfer, or otherwise convey its interests in such licenses currently held by the Company and/or PAI. Austin appears to be personally motivated to settle these proceedings quickly and to enter into a settlement or other agreement to sell or transfer the licenses.

THE PARTIES

3. Plaintiff is the record owner of at least 16,666 shares of Class A Common Stock of the Company, par value \$.001 per share (the "Class A Common Stock").

4. Defendant PCS is a corporation organized under the laws of the State of Delaware. Through the ownership of telecommunications licenses, the Company is in the early stages of development to become a full services wireless telecommunications provider in key market areas across the United States and Puerto Rico.

5. Defendant Austin purports to be the current Chairman of the Board, President, and sole director of the Company.

BACKGROUND

6. The Company owns numerous site-based Specialized Mobile Radio ("SMR") licenses (the "Site-Based Licenses") in the U.S. Virgin Islands and Puerto Rico. In 2000, PAI filed an application to participate in an auction conducted by the FCC, so-called Auction No. 34, during which PAI was the successful bidder of 38 SMR economic area ("EA") licenses along the eastern seaboard, the western coast of California, as well as in Puerto Rico and the U.S. Virgin Islands (the "EA Licenses" and together with the Site-Based Licenses, the "FCC

Licenses”). The FCC Licenses are potentially extremely valuable, constitute substantially all of the Company’s assets, and are the Company’s main source of potential revenue.

The Reorganization and Rebanding of the 800 MHz Spectrum and the Consensus Parties’ Proposal

7. Prior to 2004, Nextel Communications, Inc. (“Nextel”) was licensed to transmit on frequencies in the 800 MHz band that are interleaved with the frequencies utilized by police, fire, and other public safety providers.

8. Under FCC regulations, Nextel was obligated not to create harmful interference in the 800 MHz band and to remedy any such interference if it arose.

9. Nevertheless, in-band interference occurred and persisted, giving rise to complaints from public safety authorities.

10. In response to these concerns, Nextel, in conjunction with certain trade associations (which alliance became known as the “Consensus Parties”) proposed to abandon its existing interleaved spectrum in the 800 MHz band and relocate its operations into a contiguous band of spectrum.

11. Nextel also proposed to (a) take affirmative steps to remedy the interference that state and local public safety authorities had previously encountered and (b) establish a fund of approximately \$2.5 billion to cover transaction costs associated with relocating the frequencies of certain public safety agencies.

12. In return, the FCC issued Nextel a nationwide license for 10 MHz of continuous radio spectrum in the 1.9 GHz band.

13. After the FCC awarded Nextel the 10 MHz license, PCS likewise sought an award of 10 MHz in the 1.9 GHz band and offered to contribute up to \$200 million toward

any reasonable configuration costs. The Company's request was denied, however, because exclusive rights in the 1.9 GHz band were granted to other EA licensees, including Nextel.

14. In addition, PAI's 38 EA Licenses were treated unfavorably under the Consensus Parties Proposal, despite the fact that the EA Licenses were identical to other licenses that the Consensus Parties Proposal treated much more favorably. Neither the FCC, the Consensus Parties, nor any other party gave an explanation or rationale for the discriminatory treatment to PAI's EA Licenses.

The Rebanding Orders

15. In July and December 2004, the FCC issued its decision on the Consensus Parties Proposal in the following orders (collectively, the "Rebanding Orders"): (a) WT Docket No. 02-55, *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, 19 FCC Rcd. 21818, released October 29, 2004; (b) *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *appeal pending*; and (c) *Memorandum Opinion and Order*, FCC 05-174, 20 FCC Rcd. 16015, released October 5, 2005, as amended by *Erratum*, DA 05-3061, released November 25, 2005. The Rebanding Orders essentially adopted the Consensus Parties Proposal, including the discriminatory treatment of the PAI EA Licenses and the exclusive award of the nationwide 10 MHz license in the 1.9 GHz band to Nextel.

16. PCS responded to the Rebanding Orders by filing a Petition for Reconsideration with the FCC on December 22, 2004. PCS later filed a Petition for Review in the U.S. District Court of Appeals for the District of Columbia in an action styled *Preferred*

Communication Systems, Inc. v. Federal Communications Commission and the United States of America, Case No. 06-1076 (the “District Court Action”) in early 2006, seeking reconsideration of the FCC’s determination in the Rebanding Orders. In short, the Petition for Review in the District Court Action argued, among other things, that (a) identically situated licenses should be treated the same and (b) the FCC lacked authority to grant the exclusive rights to the 1.9 GHz band to Nextel and other EA licensees. The FCC responded to the District Court Action by seeking to dismiss or delay such action.

The FCC Enforcement Action

17. In July 2007, the FCC filed a Designation Hearing Order with the FCC Enforcement Bureau (“EB”), styled *In the Matter of Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.*, E.B. Docket No. 07-147 (the “FCC Hearing”). The FCC Hearing relates to numerous issues, including, among other matters, (a) whether the Company and PAI committed misrepresentations and/or lacked candor in its dealings with the FCC, (b) issues relating to certain stockholders’ ownership interests in the Company, the outcome of which could affect Austin’s purported control over the Company, (c) alleged transfers of control of certain licenses held by the Company without FCC approval, and (d) the qualifications of the Company, PAI, and their principals, to be and remain FCC licensees.

18. An investor group, Preferred Spectrum Investments, LLC (“PSI”), has sought to participate and provide legal representation on behalf of the Company and PAI in the FCC Hearing. Austin, however, who presently lacks legal representation in the FCC Hearing, has refused to allow PSI to participate in the FCC Hearing, thereby precluding the Company from obtaining effective legal representation in connection with the FCC Hearing. Austin has

refused PSI's assistance despite PSI's offer not only to pay the legal fees for the Company and PAI, but also to pay PCS's license renewal fees so that it could preserve licenses that would otherwise expire. Another investor group, Preferred Investor Association ("PIA"), has sought to intervene on behalf of the Company and PAI in the FCC Hearing, but this attempt was likewise opposed by Austin and the FCC EB. Instead, Austin has sought to settle the FCC Hearing, without the advice of counsel, on terms believed to be highly unfavorable to the Company and its stockholders, as described below.

19. Austin is motivated to settle quickly the issues raised in the FCC Hearing to avoid further scrutiny of various accusations made against him in connection with the FCC Hearing and to resolve certain issues that may affect his purported control of the Company. Specifically, the FCC alleges in its proceeding against him that he has caused the Company to make inaccurate or incomplete filings or altogether to fail to make certain filings with the FCC. For instance, in a notice issued by the FCC in connection with the FCC Hearing, the FCC accuses Austin and the Company of, among other things, (a) making inaccurate representations as to the interests held by certain stockholders of the Company, (b) making inaccurate representations as to the involvement and participation of certain individuals in the Company's affairs, (c) failing to promptly and accurately respond to letters of inquiry from the FCC and failing to keep certain responses thereto up to date and accurate, (d) making inaccurate representations that PAI had met certain operational benchmarks required to maintain certain of the EA Licenses, and (e) failing to keep certain of the FCC Licenses operational for greater than one year, which may subject such licenses to cancellation. These actions have placed the Company's interests in the FCC Licenses, the Company's main asset and potential source of revenue, in jeopardy. Not only do these actions constitute punishable violations of federal

regulations, they also constitute a willful breach of Austin's fiduciary duties owed to the Company and its stockholders.

20. As previously mentioned, on March 11, 2009, the FCC Hearing was suspended while the parties sought to reach a negotiated settlement. Specifically, Plaintiff has reason to believe that the FCC EB and Austin, negotiating on behalf of PCS, are seeking a settlement that would require the Company to, *inter alia*, (a) sell certain of the FCC Licenses in Puerto Rico and the U.S. Virgin Island to other telecommunications licensees, including successors to Nextel, at substantially less than fair market value and (b) withdraw its Petition for Review in the District Court Action. In exchange, the FCC would agree to withdraw the Designation Hearing Order in the FCC Hearing and grant certain of PAI's waiver requests required to maintain certain of the EA Licenses.

21. The execution of such a settlement agreement would cause the Company and its stockholders to be irreparably harmed. The Company's loss of its rights to certain of the FCC Licenses would eliminate its main source of future revenue and drastically impair the value and future earning potential of the Company. In addition, the Company would lose any claims it had in connection with the District Court Action, which claims are also potentially extremely valuable. As such, the settlement agreement is not in the best interest of stockholders.

22. In negotiating the settlement, Austin appears to be acting in his own self-interest, and not in the best interests of the Company and its stockholders. As mentioned above, Austin has substantial motivation to settle quickly with the FCC due to a desire to avoid further scrutiny of the serious allegations made against him in connection with the FCC Hearing. In addition, Austin currently purports to be the controlling stockholder of the Company, which control is at issue in the FCC Hearing, thereby making Austin an interested party in any

settlement of the FCC Hearing in his favor. Due to these personal interests, Austin should be precluded from entering into, on behalf of the Company and its stockholders, any settlement agreement with the FCC or any other agreement that attempts to sell, transfer, or convey any of the FCC Licenses or to withdraw the Company's claims in the District Court Action.

23. Moreover, Austin lacks authority under the Certificate of Incorporation to take any action as a director on behalf of the Company and the stockholders. Article FOURTH, Section 2(f)(iii) of the Company's Certificate of Incorporation provides that as long as greater than 100,000 shares (which number shall be adjusted following any reclassification, subdivision, or combination of such shares) of Series A 6% Cumulative Convertible Preferred Stock of the Company, par value \$.001 (the "Series A Preferred Stock"), is issued and outstanding, the holders of the Series A Preferred Stock shall have the power to elect one director to the Board at any annual meeting. This Section further provides that so long as the holders of the Series A Preferred Stock have the right to elect a director, "the Board shall consist of no less than four (4) and no more than nine (9) members."

24. There are currently greater than 100,000 shares of Series A Preferred Stock of the Company issued and outstanding, and therefore the holders of the Series A Preferred Stock have the right, pursuant to Article FOURTH, Section 2(f)(iii) of the Certificate of Incorporation, to elect a director to the Board. Because this right of the holders of the Series A Preferred Stock is in effect, the Board must consist of at least four directors. Currently, however, the Board consists of a single member, Austin, who has never permitted or invited the Series A holders to appoint a director. Therefore, since less than a quorum of directors is currently sitting on the PCS Board, Austin lacks the power and authority to take action on behalf of PCS under Delaware law. 8 *Del. C.* § 141(b) ("The vote of the majority of the directors present at a meeting

at which a quorum is present shall be the act of the board of directors:”) (emphasis added); 1 Balotti et al., *Del. L. of Corp. & Bus. Orgs.* § 4.2 (Supp. 2009) (stating that the existence of a vacancy on a corporate board “does not invalidate any action taken by the board during the existence of the vacancy *as long as a quorum is present*”) (emphasis added); *cf. Bentas v. Haseotes*, 769 A.2d 70, 76 (Del. Ch. 2000) (noting that where a quorum of directors has not been validly elected to the board, the hold-over directors can exercise “negative control” over the corporation).

25. As noted above, Austin has gone to great lengths throughout his tenure as an officer and director of PCS to ensure that his alleged control of the Company goes unchallenged by other stockholders, despite the fact that his control is not settled and is in fact an open issue in the FCC Hearing. In furtherance thereof, Austin has breached his fiduciary duties owed to stockholders in numerous ways. For example, Austin has never caused the Company to hold an annual meeting of stockholders, despite repeated stockholder requests to do so, thereby denying the Company’s stockholders the opportunity to contest Austin’s management of the Company as its sole director and officer and preventing stockholders from obtaining information about the Company of the sort generally provided to stockholders in connection with annual meetings.

26. In addition, in an effort to maintain his purported control of the Company and ensure that his control is unchallenged, Austin (a) has failed to issue stock certificates, warrant certificates, or any other documents to evidence certain stockholders’ investments in the Company, (b) has failed to maintain an accurate and current stock ledger that he is willing to share with other stockholders, and (c) has generally refused to provide stockholders basic information about the Company. For instance, Plaintiff has been notified by numerous

stockholders that the Company never provided them with any evidence of their investments in the Company despite repeated attempts to obtain such documentation from the Company.

27. In addition, Plaintiff and certain other stockholders never received new stock certificates evidencing their ownership of Company stock after Austin purported to reorganize the corporate structure of the Company on or about March 27, 2007.¹ The reorganization was purportedly accomplished through an agreement between the Company and its then current stockholders, which agreement Plaintiff approved by written consent. However, the amendment and restatement of the Certificate of Incorporation that was filed with the Delaware Secretary of State on March 27, 2007 failed to incorporate any language regarding the forward split of the Common Stock of the Company, par value \$.001 per share (the "Common Stock") or the reclassification of the Common Stock into Class A Common Stock purportedly accomplished pursuant to the reorganization. Thus, it remains unclear to Plaintiff whether the reorganization was effective under Delaware law. Austin's failure to cause the Company to provide certain stockholders evidence of their interests in the Company following the reorganization was likely motivated by Austin's own desire to ensure that this purported controlling interest in the Company could not be challenged.

28. Upon information and belief of Plaintiff, not only has Austin failed to provide investors with evidence of their investments in the Company, Austin has failed to keep an accurate and/or complete stock ledger for the Company and has manipulated the contents

¹ The reorganization was purportedly done by (i) implementing a forward split of the existing shares of Common Stock on a two-for-one basis; (ii) reclassifying the existing shares of Class A Common Stock; and (iii) creating a new class of common stock designated as Class B Common Stock, par value \$.001 per share (the "Class B Common Stock"). In addition, through the plan of reorganization, the rights of the holders of the Company's existing Series A Preferred Stock, par value \$.001 per share, were purportedly modified and a new series of preferred stock, Series B Preferred Stock, par value \$.001 per share, was created.

thereof to enhance his purported control of the Company. Again, Austin's motivation in manipulating the contents of the stock ledger in this manner is likely a desire to ensure that this purported controlling interest in the Company could not be challenged.

29. Indeed, Austin has consistently refused to recognize other stockholders' interests in the Company and readily rebuffs any challenge to his purported control, despite the fact that it is unsettled, as indicated in the FCC Hearing, whether he indeed has a controlling interest in the Company. For example, Austin refused to recognize the formation of certain stockholder groups formed to protect their interests in the Company.

30. In a further effort to disenfranchise stockholders, the Company (through Austin) has refused previous stockholder requests for books and records of the Company, including a copy of the Company's stock ledger, that stockholders are entitled to inspect pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). In particular, by letter dated May 29, 2009, Plaintiff made a written demand, under oath, pursuant to 8 *Del. C.* § 220 (the "Demand"), to inspect certain books and records of the Company and PAI. On June 5, 2009, the Company, through Austin, responded to the Demand by letter, by making a blanket and baseless rejection of all of Plaintiff's requests for inspection. Austin's refusal, on behalf of the Company, to provide the requested information to Plaintiff was unfounded, as Plaintiff's Demand fully complied in all respects with 8 *Del. C.* § 220 and Delaware law, and was just another instance of Austin's attempt to maintain alleged control over every aspect of the Company and to ensure that his alleged control goes unchallenged.

31. After receiving the rejection of the Demand sent by Austin on behalf of the Company, Plaintiff filed a Verified Complaint under 8 *Del. C.* § 220 in the Court of Chancery on June 12, 2009, in an action styled *Michael D. Judy v. Preferred Communication*

Systems, Incorporated and Charles M. Austin, Case No. 4662, seeking an order summarily requiring the Company to allow Plaintiff to inspect the books and records requested in the Demand (the "Section 220 Action"). Once again ignoring his duties as a purported officer and director of the Company, Austin has failed to even cause the Company to file an Answer to Plaintiff's Verified Complaint in the Section 220 Action, and has failed to notify Plaintiff whether he has obtained Delaware counsel on behalf of the Company with respect to this matter, despite repeated attempts by Plaintiff's counsel to discover whether he has done so. Again, Austin's unresponsiveness is clearly an attempt to keep stockholders uninformed and to maintain his purported control of the Company.

32. Plaintiff also has reason to believe that Austin has been derelict in his management of the Company through his failure to pay taxes owed by the Company. For instance, Austin has failed to cause the Company to pay its payroll taxes extending as far back as 1998. The liabilities owed by the Company resulting from these delinquent taxes is estimated to be over \$1 million, most of which is the result of penalties. In addition, Austin has failed to cause the Company to pay certain of its state and federal corporate income taxes, as well as its corporate franchise taxes owing in the State of Delaware. As of the date hereof, the corporate franchise taxes alone owed to the State of Delaware are approximately \$240,000.

33. In short, Austin has taken numerous actions, amounting to a series of breaches of fiduciary duties, to ensure that he maintains his purported control of the Company and that such purported control goes unchallenged. Maintaining his purported control is necessary to furthering his personal agenda of settling quickly with the FCC. But the proposed settlement, which would sell the Company's interests in the FCC Licenses and withdraw the Company's claims in the District Court Action, is not in the best interests of the Company and its

stockholders. As such, Austin should not be permitted to negotiate and enter into such a settlement or similar agreement on behalf of the Company.

FIRST CAUSE OF ACTION

(Declaration of Austin's Inability to Act on Behalf of the Company)

34. The allegations of paragraphs 1 through 33 above are incorporated by reference as if fully set forth herein.

35. Article FOURTH, Section 2(f)(iii) of the Certificate of Incorporation provides that as long as 100,000 shares of Series A Preferred Stock are issued and outstanding, the holders of the Series A Preferred Stock shall have the power to elect one director to the Board at any annual meeting. This Section further provides that so long as the holders of the Series A Preferred Stock have the right to elect a director, the Board must consist of at least four members.

36. There are currently at least 100,000 shares of Series A Preferred Stock issued and outstanding, and therefore such holders have a right to elect a director to the Board and the Board must consist of at least four members.

37. Currently, Austin is the only purported director on the Board. Because he alone does not constitute a quorum of directors as required by the DGCL for a board of directors to take valid action on behalf of the Company and its stockholders, he may not take any action on behalf of PCS and its stockholders.

38. Because Austin has taken and attempted to take action on behalf of the Company and the stockholders despite the fact that he alone does not constitute the requisite quorum of directors, a ripe and justiciable controversy exists, and Plaintiff is entitled to a declaration by the Court that the Board, as currently composed with Austin as its sole director,

lacks the authority to take action on behalf of the Company and its stockholders at least until the Company convenes a meeting of stockholders for the purpose of electing directors to the Board.

39. Plaintiff lacks an adequate remedy at law.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duties)

40. The allegations of paragraphs 1 through 39 above are incorporated by reference as if fully set forth herein.

41. Austin purports to be the sole director of the Company, as well as its current Chairman of the Board, and President.

42. Austin, as a purported officer and director of the Company, owes the Company and its stockholders (including Plaintiff) the duties of care and loyalty.

43. As discussed above, Plaintiff has reason to believe Austin has negotiated a settlement with respect to the issues raised in the FCC Hearings which serves his own self-interest. His desire to settle quickly and ability to realize a substantial personal windfall (dependent upon his purported control of the Company, which is an outstanding issue in the FCC Hearing) have led him to negotiate for a settlement involving the sale or surrender of two of the Company's largest and most important assets: certain of the FCC Licenses and the Company's claims in the District Court Action. Such a settlement or similar agreement would not be in the best interests of the Company or its stockholders, as it would greatly jeopardize the future value and earning potential of the Company. Thus, Austin's actions with respect thereto would amount to breaches of the duties of care and loyalty, and his failure to disclose such an agreement would result in a breach of the duty of disclosure owed to stockholders.

44. Moreover, because Austin's personal agenda to settle the FCC Hearing and sell certain of the FCC Licenses requires him to have control of the Company, he has breached his fiduciary duties to the stockholders of PCS in numerous ways in order to ensure that he maintains his purported control and that such purported control goes unchallenged, despite the fact that his control is uncertain and is at issue in the FCC Hearing.

45. The breaches of fiduciary duties alleged herein demonstrate that Austin has consistently refused to act in the best interests of the Company and its stockholders, and instead has acted in a self-interested manner to further his own personal agenda. A settlement or other agreement transferring certain of the FCC Licenses and withdrawing the Company's claims in the District Court Action would cause the Company and its stockholders to be irreparably harmed.

46. As such, Plaintiff is entitled to have the Company, Austin, PAI, or any affiliate thereof enjoined from entering into a settlement agreement with the FCC, or entering into any other agreement or taking any other action that would result in the sale of any of the FCC Licenses, the withdraw of the Company's claims in the District Court Action, or any other action that is not in the best interests of the Company or the stockholders, such as Plaintiff.

47. Plaintiff does not have an adequate remedy at law.

WHEREFORE, Plaintiff seeks the following relief:


(a) a declaration that the Board, with Austin as its sole director, is prohibited from taking any action on behalf of the Company or the stockholders, including entering into a settlement agreement with the FCC, until a special meeting of stockholders is called in order to elect directors.

(b) the issuance of a temporary restraining order or preliminary injunctive relief enjoining Austin, the Company, PAL, or any affiliate thereof from entering into a settlement agreement with the FCC, or entering into any other agreement, or taking any other action that would result in the sale of any of the FCC Licenses, the withdraw of the Company's claims in the District Court Action, or any other action that is not in the best interests of the Company or the stockholders, such as Plaintiff;

(c) an award of damages in an amount appropriate to compensate Plaintiff for the damages he has sustained or will sustain due to Defendants' actions; and

(d) an award of attorneys' fees, costs, and such further relief as the Court may deem just and proper.

POTTER ANDERSON & CORROON LLP

By 
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(302) 984-6000

Attorneys for Plaintiff Michael D. Judy

Dated: July 8, 2009

923084/34360

FROM :

FAX NO. : 559 299 5839

EFiled: Jul 8, 2009 4:22 PM EDT
Transaction ID 26012462
Case No. 4721-



VERIFICATION

STATE OF California)
COUNTY OF Fresno) ss.

I, Michael D. Judy, state under oath that I have read the foregoing Verified Complaint and that, to the best of my knowledge, information and belief, the statements of fact made therein are true and correct.

Michael D. Judy
Michael D. Judy

SUBSCRIBED TO AND SWORN before me this 7th day of July, 2009

K. Montgomery-Hodorowski
Notary Public

My Commission Expires: 12/23/2011



See Attachment

EXHIBIT 2



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL D. JUDY,

Plaintiff,

V.

C.A. No. _____

**PREFERRED COMMUNICATION SYSTEMS,
INC., a Delaware Corporation,**

Defendant.

**VERIFIED COMPLAINT TO COMPEL ANNUAL MEETING
PURSUANT TO 8 DEL. C. § 211**

Plaintiff Michael D. Judy (“Plaintiff”), upon knowledge as to himself and upon information and belief as to all other matters, for his Verified Complaint against Defendant Preferred Communication Systems, Inc. (“PCS” or the “Company”), hereby alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to 8 *Del. C.* § 211 to compel defendant PCS to hold an annual meeting of stockholders for the election of directors and to consider such other matters as properly come before the meeting. Since it was incorporated on January 15, 1998, PCS has never held an annual meeting. Urgent matters now make it appropriate and necessary that the Company be forced finally to convene a meeting. Accordingly, Plaintiff seeks an order of the Court requiring PCS to hold the annual meeting on a date certain within 30 days of the entry of such order.

PARTIES

2. Plaintiff is the record owner of at least 16,666 shares of Class A Common Stock of the Company.

3. PCS is a corporation organized under the laws of the State of Delaware. Through the ownership of telecommunications licenses, the Company is in the early stages of development to become a full services wireless telecommunications provider in key market areas across the United States and Puerto Rico.

BACKGROUND

4. In 1999, the Company and its wholly-owned subsidiary, Preferred Acquisitions, Incorporated, a company incorporated under the laws of the Commonwealth of Puerto Rico ("PAI"), acquired 86 site-based SMR licenses located in the U.S. Virgin Islands and Puerto Rico. Thereafter, in 2000, PAI filed an application to participate in an auction conducted by the Federal Communications Commission (the "FCC"), so-called Auction No. 34, during which PAI was the successful bidder of 38 SMR economic area ("EA") licenses along the eastern seaboard, the western coast of California, as well as in Puerto and the U.S. Virgin Islands (together, the "FCC Licenses"). The FCC Licenses are potentially extremely valuable.

5. In order to maintain its continued ownership of the FCC Licenses, the Company is required to file, in a timely manner, license renewal applications and related documents with the FCC related to the existing FCC Licenses. It has come to the attention of Plaintiff that the Company has failed to make certain of the license renewal filings with the FCC, thereby jeopardizing the Company's continued interest in the FCC Licenses.

6. The current Chairman of the Board, President, and sole director of the Company is Charles M. Austin ("Austin").

7. The Company is also party to certain matters currently before the FCC Enforcement Bureau, styled *In the Matter of Pendleton C. Waugh, Charles M Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.*, E.B. Docket No.

07-147 (the "FCC Hearing"). The FCC Hearing relates to numerous issues, including, among other matters, (i) whether the Company and PAI committed misrepresentations and/or lacked candor in its dealings with the FCC, (ii) issues relating to certain stockholders' ownership interests in the Company, the outcome of which could affect Austin's purported control over the Company, (iii) alleged transfers of control of certain licenses held by the Company without FCC approval, and (iv) the qualifications of the Company, PAI, and their principals, to be and remain FCC licensees. On March 11, 2009, the FCC Hearing was suspended for the purpose of permitting the parties to attempt to reach a negotiated settlement. Since commencement of the FCC Hearing in 2007, the Company and Austin have not responded to inquiries by its stockholders regarding developments in the FCC Hearing.

8. The Company has failed to regularly provide the Company's stockholders with information, financial or otherwise, about the Company. Moreover, the Company has *never* held an annual meeting of stockholders, thereby denying the Company's stockholders the opportunity to contest Austin's management of the Company as its sole director and officer and preventing stockholders from obtaining information about the Company of the sort generally provided to stockholders in connection with annual meetings.

9. In addition to the failure to hold any annual meetings of stockholders, the Company (through Austin) has refused previous informal requests by certain stockholders for information regarding the performance of the Company and its business.

10. Plaintiff wishes to protect the Company, its assets and all of its stockholders by convening a meeting of stockholders for the purpose of conducting an election of directors and the transaction of any other business as may properly come before the meeting.

CLAIM FOR RELIEF

11. Plaintiff repeats and realleges the allegations of paragraphs 1 through 10 of this Verified Complaint as if fully set forth herein.

12. The Company has never held an annual meeting of stockholders. The Company should be summarily ordered to hold an annual meeting of stockholders in accordance with Section 211.

13. Plaintiff has no adequate remedy at law.

WHEREFORE, under 8 *Del. C.* § 211(c), Plaintiff is entitled to an order compelling PCS promptly to hold an annual stockholders' meeting, at which the shares present in person or represented by proxy and entitled to vote will constitute a quorum, Plaintiff respectfully requests that this Court enter an Order as follows:

(a) Directing that the annual meeting of stockholders of PCS be held on a date certain within 30 days of the entry of such Order in the State of Delaware for the election of directors and for the transaction of any other business as may properly come before the meeting and such meeting shall not be adjourned, continued, or postponed prior to the election of directors absent further order of the Court;

(b) Directing that the record date for determination of stockholders entitled to vote at such annual meeting be as of the date hereof;

(c) Determining the total number of directors to be elected at the annual meeting of stockholders of PCS;

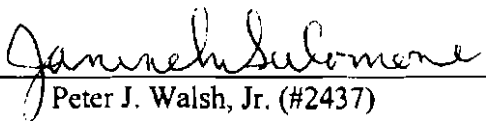
(d) Appointing a Master to oversee the annual meeting of stockholders and the election of directors with such powers as the Court deems appropriate pursuant to 8 *Del. C.* § 227(b);

(e) Providing that the shares represented at such meeting, either in person or by proxy, and entitled to vote thereof, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws of the Company to the contrary pursuant to 8 *Del. C.* § 211(c);

(f) Awarding Plaintiff his costs and expenses, including reasonable attorneys' fees, in connection with this action; and

(g) Granting such other relief as the Court shall deem just and proper.

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Dated: July 8, 2009

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